

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE NATIONAL PRESCRIPTION

OPIATE LITIGATION

This document relates to:

Track Three Cases

MDL 2804

Case No. 17-md-2804

Hon. Dan Aaron Polster

**PLAINTIFFS' MOTION FOR LEAVE TO FILE LIMITED REPLY IN OPPOSITION
TO DEFENDANTS' RESPONSES TO PLAINTIFFS' CLOSING BRIEF**

Plaintiffs hereby seek leave to file a short limited reply in opposition to the Track 3 Defendants' responses (Dkt. #4569; Dkt. #4570) to Plaintiffs' Closing Brief for Phase 2 Trial (Dkt. #4513). The reply that Plaintiffs seek leave to file is attached as Exhibit A.

In its Track Three Abatement Phase Trial Order (Dkt. #4322), the Court ordered each side to file "a written brief of their closing arguments" "[i]n lieu of oral closing arguments." *Id.* at p. 3. The Court further permitted each side to "file a written response to the other side's closing argument brief[.]" *Id.* No replies were explicitly authorized under the Track Three Abatement Phase Trial Order. *Id.*

However, in their responses to Plaintiffs' Closing Brief, Defendants raise a new argument based on a recent United States Supreme Court opinion (*Ruan v. U.S.*, 142 S. Ct. 2370, 2022 WL 2295024 (2022)) that is unrelated to the scope of abatement or injunctive relief and does not respond to any arguments made by Plaintiffs in their Closing Brief. *See* Dkt. #4569 (WAG/WMT Resp. to Ps' Closing Brief) at pp. 51-54; Dkt. #4570 (CVS Resp. to Ps' Closing Brief) at pp. 25-26. Specifically, Defendants argue *Ruan*, which interprets a particular provision of the CSA in the context of a *criminal prosecution*, requires either a directed verdict on liability or a new liability trial in this case. *Id.* Plaintiffs' proposed reply merely seeks to respond to this new argument by explaining why *Ruan* is inapplicable to Plaintiffs' nuisance claims. *See* Ex. A. For these reasons, good cause exists to allow Plaintiffs to file their reply. *Cf. NCMIC Ins. Co. v. Smith*, 375 F. Supp.

3d 831, 835–36 (S.D. Ohio 2019) (good cause to file a sur-reply exists “where the reply brief raises new grounds that were not included in movant’s initial motion”) (citation omitted).

Dated: July 13, 2022

Respectfully submitted,

Jayne Conroy
SIMMONS HANLY CONROY
112 Madison Avenue, 7th Floor
New York, NY 10016
(212) 784-6400
(212) 213-5949 (fax)
jconroy@simmonsfirm.com

Joseph F. Rice
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
(843) 216-9000
(843) 216-9290 (Fax)
jrice@motleyrice.com

Paul T. Farrell, Jr., Esq.
FARRELL & FULLER LLC
1311 Ponce de Leone Ave., Suite 202
San Juan, PR 00907
(304) 654-8281
paul@farrellfuller.com

Plaintiffs’ Co-Lead Counsel

W. Mark Lanier
M. Michelle Carreras
LANIER LAW FIRM
10940 W. Sam Houston Pkwy N., Ste 100
Houston, TX 77064
(713) 659-5200
(713) 659-2204 (Fax)
wml@lanierlawfirm.com
mca@lanierlawfirm.com

Trial Counsel

/s/ Peter H. Weinberger

Peter H. Weinberger (0022076)
SPANGENBERG SHIBLEY & LIBER
1001 Lakeside Avenue East, Suite 1700
Cleveland, OH 44114
(216) 696-3232
(216) 696-3924 (Fax)
pweinberger@spanglaw.com

Plaintiffs' Liaison Counsel

Frank L. Gallucci
PLEVIN & GALLUCCI CO., L.P.A.
55 Public Square, Suite 222
Cleveland, OH 44113 (216)
861-0804
(216) 861-5322 (Fax)
FGallucci@pglawyer.com

Hunter J. Shkolnik
Salvatore C. Badala
NAPOLI SHKOLNIK
270 Munoz Rivera Avenue, Suite 201
Hato Rey, Puerto Rico 00918
(787) 493-5088, Ext. 2007
hunter@napolilaw.com
sbadala@napolilaw.com

*Counsel for Plaintiffs Lake County and
Trumbull County, Ohio*

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2022, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system. Copies will be served upon counsel of record by, and may be obtained through, the Court CM/ECF system.

/s/Peter H. Weinberger

Peter H. Weinberger